

# Memo

To: **Montana Wheat & Barley Committee**

From: Terry Whiteside

Date: May 4, 2007

Re: **Transportation Report**



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## **RAIL COMPETITION BILL IN THE HOUSE IS INTRODUCED BY CHAIRMAN JAMES OBERSTAR**

The House version of the 2007 Rail Competition bill was introduced on Thursday, May 3, 2007 by Chairman Oberstar and 16 of his colleagues. Expect a rapid surge of cosponsors in the next few weeks. The bill will be entitled: **H.R. 2125, Railroad Competition and Service Improvement Act of 2007**

The House version follows the introduction of the Rail Competition bill in the Senate called S953 by Senator Rockefeller and 10 Senators last month.

The Railroad Competition and Service Improvement Act of 2007 is co-sponsored by the following members: Marion Berry (D AR-01), Timothy J. Walz (D MN-01); Trent Franks (R AZ-02); Ron J. Kind (D WI-03); Rodney Alexander (R LA-05); Charles W. Boustany (R LA-07); Mazie Hirono (D HI-02); Mike Simpson (R ID-02); Stephanie Herseth Sandlin (D SD-At Large); Earl Pomeroy (D ND-At Large). The final offer arbitration provision, which is very important to many members of ARC, is included in the bill.

The **Alliance for Rail Competition** and many folks from Agriculture pushed very hard for the inclusion of Final Offer Arbitration (FOA) in both the Senate and House bill and they were successful. **The Alliance for Rail Competition, Jennifer Spurgat and The National Association of Wheat Growers, the National Barley Growers Association, David Torgerson and the Minnesota Association of Wheat Growers, Minnesota Soybean Growers Association, the Minnesota Barley Growers Association, Montana Governor Brian Schweitzer, Evan Hayes – President of NBGA, Rep. Mike Simpson, Idaho Grain**

**Producers Association, Steve Strege** – ND Grain Dealers Association, **Gordley & Associates** and **Meyers & Associates, PPL**, the **Glass Producers, National Farmers Union** and many others all worked tirelessly to see to it that a FOA process was part of the bill. The FOA process included in the House bill will mirror the FOA provision in the Senate bill – applying on Ag, Fertilizer and Forest products. Many other industrial groups also worked hard to see FOA in the bill and would like access to the process – stay tuned.

The following is the summary of the major provisions of the bill, as provided by the committee.

- Clarifies the implementation of rail transportation policy. Clarifies the implementation of U.S. rail transportation policy as: (1) to ensure effective competition among rail carriers; (2) to ensure reasonable rates for rail customers in the absence of competition; and (3) to ensure consistent and efficient rail transportation, including the timely provision of rail cars as requested by customers.
- Eliminates “bottlenecks.” Under the bill, on the request of a shipper, the carrier must establish a rate for any two points on the carrier's system where traffic originates, terminates, or can be interchanged. In addition, the reasonableness of the rate would be subject to challenge. This bill will give shippers access to competitive rail service even if a single carrier has monopoly control over a short, bottleneck portion of a route.
- Creates competitive rail service at switching points. The bill requires rail carriers to enter into reciprocal switching agreements where the STB finds that such agreements are in the public interest or where agreements are needed to ensure rail service is competitive. The bill also prohibits the STB from requiring that the petitioning carrier show conduct inconsistent with antitrust laws.
- Eliminates “paper barriers.” These barriers are contractual agreements that prevent short-line railroads that cross two or more major rail systems from providing rail customers access to competitive service on one of these systems. The agreements require the short-line railroads to deliver all or most of its traffic to the major carrier that originally owned the short line facilities. Under the bill, the STB must terminate these restrictions, upon request, unless the STB finds that the termination would be inconsistent with the public interest or materially impair the ability of an affected rail carrier to provide service to the public,
- Establishes a new regulatory process for “Areas of Inadequate Rail Competition.” The bill allows the STB to designate a State or substantial part of a State as an Area of Inadequate Rail Competition (AIRC), upon petition of a Governor or Attorney General of a State, or the Rail Customer Advocate of the Department of Transportation. Upon the designation, the STB has 60 days to provide remedies authorized by current law to resolve the anti-competitive conduct. The bill also requires the Rail Customer Advocate to conduct an oversight study of AIRCs within one year of the date of enactment.

- Addresses rail service problems. The bill clarifies the railroad's obligation to provide reliable and efficient service, and allows rail customers to hold railroads liable for damages sustained due to poor service. The bill also requires the STB to post on its website a description of each complaint from a customer about rail service, and how and when the STB ultimately resolved the complaint. The STB is also required to submit an annual report to Congress regarding rail service complaints, and the procedures the STB took to resolve them.
- Creates an arbitration process for certain rail disputes. The bill allows one party to submit a dispute over rail rates, rail service, and other matters involving any agricultural product, including timber, paper, and fertilizer under the jurisdiction of the STB for "final offer" binding arbitration.
- Reduces fees for filing rail rate cases. Shippers are now required to pay a \$178,200 fee for filing a rate case. This rate is expected to rise again this year. Under this legislation, filing a rate case would cost the same as filing before a federal district court, about \$500.
- Improves the rate reasonableness standard. The bill prohibits the STB from using their current practice of requiring shippers challenging rail rates to submit estimates of the costs of constructing and operating a new, hypothetical railroad that carries only the commodity that the shipper transports. The STB currently compares the expense of the hypothetical railroad with existing rates to determine whether the challenged rates are reasonable or not. Under the bill, the STB would be required to adopt a new method based on the railroad's actual costs, including a portion of fixed costs and an adequate return on debt and equity.
- Creates an Office of Rail Customer Advocacy in the Department of Transportation. The Rail Customer Advocate would accept rail customer complaints; collect, compile, and maintain information regarding the cost and efficiency of rail transportation; and participate as a party in STB proceedings. The Rail Customer Advocate may also petition the STB for action.
- Directs the STB to investigate complaints over service. Our bill directs the STB to follow up on complaints over rail carrier service, and suspend the action in dispute if it finds the allegation has merit.

As **Evan Hayes, President of the National Barley Growers Association** so aptly put it – NOW THE WORK BEGINS. The rail captive shippers have never had as good an opportunity to see captive legislation move through Congress. What is needed is a very strong effort by all captive shippers interests in gathering up Congressional support for these two bills.

The **National Rural Electric Co-op Association** is poised to bring over 3,000 of their members to Washington D.C. next week and they are committed to work hard on gathering cosponsors for this bill.

Efforts by **CURE**, **American Chemistry Council**, **NRECA** and **ARC** are all focused on the same task – gather cosponsors for these bills – as quickly as possible.

**THE ALLIANCE FOR RAIL COMPETITION, UNITED  
TRANSPORTATION UNION AND CURE ISSUE  
JOINT LETTER TO ALL SENATORS CALLING FOR  
SUPPORT OF S. 953 – RAIL COMPETITION**

